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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/717,914	11/21/2003	Eliana Soubhie	109-1 US	7378
24949	7590	11/30/2005	EXAMINER	
TEITELBAUM & MACLEAN 1187 BANK STREET, SUITE 201 OTTAWA, ON K1S 3X7 CANADA			LEITH, PATRICIA A	
			ART UNIT	PAPER NUMBER
			1655	

DATE MAILED: 11/30/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/717,914

Applicant(s)

SOUBHIE, ELIANA

Examiner

Patricia Leith

Art Unit

1655

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 August 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) 1 is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Claims 1-9 are pending in the application.

Election/Restrictions

Applicant's election with traverse of Group I, claims 1-8 in the reply filed on 8/11/05 is acknowledged. The search for the composition and the process for preparing as recited in claim 9 were found to be co-extensive. Therefore, the **restriction requirement is hereby removed** and Applicant's arguments pertaining to the restriction requirement are rendered moot.

Claims 1-9 were examined on their merits.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 2 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

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Claim 2 recites 'are within 50% of 200 to 60 to 40 to 6'. This statement is confusing, and the Examiner cannot exactly determine what ratios Applicant intends to claim. Clarification is necessary.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Joanides (GB 2,228,411 A) in view of Lust (1974).

Joanides (GB 2,228,411 A) taught a topical cosmetic composition which comprised lemon juice, olive oil, boric acid and emulsifying wax (see p. 6).

Joanides taught that all of the ingredients were heated and mixed together (see pages 4-5).

Joanides did not specifically teach the incorporation of beeswax into the cosmetic composition, the particular concentrations of each constituent or the specific method for making as recited in claim 9.

Lust (1974) taught that beeswax was routinely used to create therapeutic topical ointments (p. 40 – OINTMENT).

One of ordinary skill in the art would have been motivated to either 1) substitute the emulsifying wax with beeswax because beeswax would have been a suitable, efficient alternative to emulsifying wax or 2) add beeswax to the composition already disclosed by Joanides in order to impart additional firm consistency.

It has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 220 F2d 454,456,105 USPQ 233; 235 (CCPA 1955). see MPEP § 2144.05 part II A. Although the references did not specifically state the particular ranges as indicated by claims 6-8, it would have been obvious to one of ordinary skill in the art at the time Applicants' invention was made to determine all operable and optimal concentrations of components because concentration is an art-recognized result-effective variable which would have been routinely determined and optimized in the pharmaceutical art. Further, if there are any differences between Applicant's claimed method and that suggested by the combined teaching of the prior art, the differences would be appear minor in nature. Although the prior art do not teach all the various permutations of concentration ranges as claimed in claims6-8, it would be

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conventional and within the skill of the art to identify the optional concentrations of given active ingredients. For example, one of ordinary skill in the art would have been motivated to have modified the proportions of active ingredients in the composition in order to enable the content of the preparation to be matched with the demands and needs of individuals which needed treatment. Such variations in amounts of pharmaceutically active ingredients is considered merely optimization of result effective variables, conventional practice in the art of pharmacology.

Joanides teaches the general conditions for making a topical cream/ointment; that is, heating the mixture, mixing in the constituents and allowing to cool. It is known that wax is difficult to mix when cool (as admitted by Applicant). It is deemed that any particular order of addition of materials into the heated wax would have been a matter of judicious selection which would not have substantially changed the overall characteristics of the composition.

From the teachings of the references, it is apparent that one of ordinary skill in the art would have had a reasonable expectation of success in producing the claimed invention. Therefore, the invention as a whole was *prima facie* obvious to one of ordinary skill in the art at the time the invention was made, as evidenced by the references, especially in the absence of evidence to the contrary.

Allowable Subject Matter

Claim 1 is allowed. The closest prior art of record is Joanides (GB 2,228,411 A); the teachings of which were keenly described supra. Joanides did not provide any motivation for a composition 'consisting essentially of' olive oil, bees wax, lemon juice and boric acid. It is clear from Joanides that many other ingredients are added to their composition which would provide for additive effects such as honey, egg white, whiskey, grape brandy and ethyl alcohol for example (see p.8).

Claim 2 will be allowed if amended to overcome the rejection under 35 USC 112 Second paragraph; or alternatively, if convincing arguments are presented to the contrary.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Patricia Leith whose telephone number is (571) 272-0968. The examiner can normally be reached on Monday - Thursday 8:30am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terry McKelvey can be reached on (571) 272-0775. The

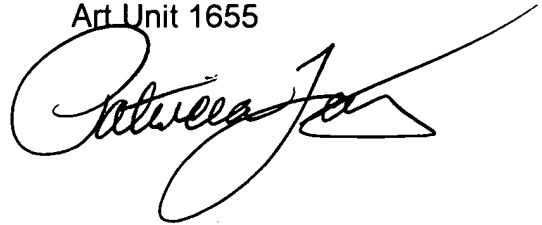
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fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

11/21/05

Patricia Leith
Primary Examiner
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A handwritten signature in black ink, appearing to read 'Patricia Leith', with a large, sweeping flourish extending from the end of the signature.